# SUPREME COURT OF THE UNITED STATES.

No. ~~19~~ 29.

GEORGE W. WARD AND RICHARD K. CALL, REGISTER AND RECEIVER, &c., (U. S.) APPELLANTS,

VERSUS

LEWIS GREGORY.

APPEAL FROM THE COURT OF APPEALS FOR THE TERRITORY OF FLORIDA.

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Pleas at the city of Tallahassee, before the court of appeals of the Territory of Florida, on Thursday, the twentieth day of January, in the year of our Lord one thousand eight hundred and thirty-one.

Be it remembered, that heretofore, to wit, on the day of A. D. 1827, was sued out of the said court of appeals a writ of error, directed to the superior court for the middle district of Florida; (the above writ of error has been lost or mislaid;) agreeable to which writ the following record and proceedings were brought and filed in said court of appeals on the 1st day of January, A. D. 1828:

RECORD.

TERRITORY OF FLORIDA, sc.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and twenty-six, was issued from the clerk's office of the superior court for the middle of Florida, a writ of mandamus to the register and receiver of the western land district of Florida, directed in the following words:

"CLERK'S OFFICE, *superior court, middle district of Florida, Leon county.* In the name and by the authority of the United States of America, to George W. Ward, register of the western land district of Florida, and Richard K. Call, receiver of public moneys for lands sold in the said district, greeting:

Whereas Lewis Gregory, previous to the first day of January, in the year of our Lord one thousand eight hundred and twenty-five, cultivated

and inhabited, in his own right, two separate eighths of the same section within the western land district of Florida, and applied for permission to enter and purchase the same under the act of Congress entitled "An act giving the right of pre-emption in the purchase of lands to certain settlers in the States of Alabama, Mississippi, and the Territory of Florida," approved the twenty-second day of April, in the year of our Lord one thousand eight hundred and twenty-six, producing the affidavit of Jason Gregory in support of his claim, and that the register and receiver of the land office for the said district objected to the entry, and refused to permit the application, on the ground alone that the act referred to forbid the entry by eighths of sections: and whereas by the complaint of the said petitioner, we are informed that you, the said George W. Ward and Richard K. Call, register and receiver as aforesaid, will not permit him, the said Lewis Gregory, to enter and purchase the said quarter section of land, not regarding his claim and application, notwithstanding his compliance with the requisites of the law; and that consulting and advising together, you do still refuse permission to the said Lewis Gregory to enter and purchase said quarter section of land in your several offices: by reason of the said acts and doings he is much aggrieved, and is in danger of sustaining great injury, and hath prayed a remedy in this behalf: We, therefore, being willing to maintain the statute aforesaid, and that speedy justice may be done in this behalf, do command you, the said George W. Ward and Richard K. Call, register and receiver as aforesaid, and each of you, that immediately after the receipt of this writ you do permit the said Lewis Gregory to enter and purchase the said quarter section of land in your several offices, receive payment, and give certificates of the same, and that you do and execute all the matters necessary for obtaining a patent for the same; and when you shall have executed this command, you shall make known unto our Judge of our superior court for the middle district of Florida, Leon, instanter, together with this writ. Witness Augustus Woodward, Judge of the middle district of Florida, this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fifty-first.

"C. NICHOLAS, *Clerk.*"

Upon which said writ the following return is made: "Done as within commanded.

"G. W. WARD, *Register.*
"R. K. CALL, *Receiver.*"

The following is the petition on which the above writ of mandamus was awarded:

"To the Honorable A. B. Woodward, Judge of the superior court for the middle district of Florida:

"The petition of Lewis Gregory respectfully states unto your honor, that previous to 1st day of January, 1825, he actually inhabited and cultivated a tract of land in the western land district of Florida; that by the lines run by the United States' surveyor subsequent to that time, it appears that the improvement made by your petitioner is thrown upon the separate eighths of the same section; that he has made application to the register and receiver of said district to permit him to enter his pre-emption in eighths, which they refuse: your petitioner therefore prays of your honor to order a pre-emp-

tory mandamus to issue, commanding G. W. Ward, register, and R. K. Call, receiver, to permit your petitioner to enter his pre-emption in eighths. Your petitioner further states, that the register and receiver admit the testimony to be ample and sufficient, and only require a pre-emptory mandamus to issue as a security for their so doing.

"LEWIS GREGORY.

"TALLAHASSEE, *29th December*, 1826."

Endorsed on the back of said petition, "Let the writ issue.

WOODWARD, *Judge.*

"*December 29th*, 1826."

SUPERIOR COURT, *clerk's office, middle district of Florida, Leon.*

The foregoing four pages are true copies and extracts from the files and records of this office in the case of Lewis Gregory, and Richard K. Call and George W. Ward. Witness my official signature and private seal, (there being no seal of office,) Tallahassee, 5th January, 1828.

C. NICHOLAS, *Clerk*, [SEAL.]

And at another day, to wit, at a court of appeals held for the Territory of Florida, on Thursday, the 8th day of January, A. D. 1829, this cause was this day heard upon the transcript of the record of the decision aforesaid and the argument of the counsel, but because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

And at another day, to wit, at the same court continued and held on Saturday, the 10th day of January, in the year last aforesaid, came the parties, by their attorneys, and thereupon it is ordered, that this cause be continued until the next term, that further argument may be heard on the question of jurisdiction.

And at another day, to wit, at a court of appeals held for the Territory of Florida, on Monday, the 4th day of January, A. D. 1830, this cause was this day further heard upon the transcript of the record of the judgment aforesaid and the argument of counsel upon the question of jurisdiction, but because the court is not advised of its judgment to be given in the premises, time is taken to consider thereof.

And at another day, to wit, at the same court continued and held on Tuesday, the 12th day of January, in the year last aforesaid, ordered, that this cause be continued until the next term.

And at another day, to wit, at a court of appeals held for the Territory of Florida, on Saturday, the 15th day of January, A. D. 1831, this cause was this day still further heard upon the transcript of the record of the proceedings aforesaid and the argument of counsel, but because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

And now, at this day, to wit, on the day and year first herein mentioned, to wit, on Thursday, the 20th day of January, A. D. 1831, came the parties, by their attorneys, and the court having maturely considered the transcript of the record of the proceedings aforesaid and the arguments of counsel, is of opinion that there is no error in the said order; it is, therefore, considered that the same be affirmed, and that the defendant recover of the plaintiffs two dollars eighty-seven and a hal f cents, his costs by him about his defence in this behalf expended; from which judgment the plain-